

ERIN O. DUNGAN (Bar No. 227090)  
BRIGGS and MORGAN, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2157  
Telephone: (612) 977-8400  
Facsimile: (612) 977-8650  
Email: edungan@briggs.com

Attorneys for Defendant  
DEXON COMPUTER, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CISCO SYSTEMS, INC. and CISCO  
TECHNOLOGY, INC.,

Plaintiffs,

v.

DEXON COMPUTER, INC.,

Defendant.

Case No. 3:11-CV-01455-WHA

**DEFENDANT'S FIRST AMENDED  
ANSWER, AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS**

JURY TRIAL DEMANDED

Defendant Dexon Computer, Inc. ("Dexon"), for its First Amended Answer to Plaintiffs  
Cisco Systems, Inc. and Cisco Technology Inc.'s Complaint, states as follows:

**JURISDICTION**

1. Dexon admits that the Complaint appears to be one for Trademark Counterfeiting,  
Trademark Infringement, Unfair Competition, and False Description arising under under §§ 32  
and 43 fo the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Counterfeiting and Trademark  
Infringement) and 1125(a) (Unfair Competition and False Description), California Common Law  
Unfair Competition and Trademark Infringement, Unfair Business Practices (Cal. Bus. & Prof. C.

§ 17200, et seq.) and Fraud (Cal. Civ. C. § 1710), but denies such claims have any legal or factual merit. Dexon denies the remaining allegations of paragraph 1 of the Complaint.

2. Dexon admits that the Court has subject matter jurisdiction over this action.

3. Dexon admits that the Court has subject matter jurisdiction over this action. Dexon further admits that it is and was at all relevant times mentioned in the Complaint a business entity incorporated in the State of Minnesota with its principal place of business in Minneapolis, Minnesota. Dexon does not have sufficient information to admit or deny the remaining allegations of paragraph 3 of the Complaint, and on that basis Dexon denies those allegations.

4. Dexon admits that this Court has personal jurisdiction over Dexon. Dexon further admits that it maintains a website accessible throughout the United States, including within the state of California. Dexon denies the remaining allegations of paragraph 4 of the Complaint.

5. Dexon admits that it has sold a product that shipped from a location within the State of California. Dexon denies the remaining allegations of paragraph 5 of the Complaint.

#### **VENUE**

6. Dexon admits that venue for this action properly lies in the Northern District of California, but denies the remaining allegations of paragraph 6 of the Complaint.

#### **INTRA-DISTRICT ASSIGNMENT**

7. Dexon admits the allegations of paragraph 7 of the Complaint.

#### **FACTUAL ALLEGATIONS RELATING TO TRADEMARK REGISTRATIONS**

8. Dexon does not have sufficient information to admit or deny the allegations of paragraph 8 of the Complaint, and on that basis Dexon denies those allegations.

9. Dexon does not have sufficient information to admit or deny the allegations of paragraph 9 of the Complaint, and on that basis Dexon denies those allegations.

1 10. Dexon admits that CISCO is identified as the owner of record for certain United States  
2 Trademark Registrations, but Dexon does not have sufficient information to admit or deny the  
3 allegations of paragraph 10 of the Complaint, and on that basis Dexon denies those allegations.

4 11. Dexon does not have sufficient information to admit or deny the allegations of paragraph  
5 11 of the Complaint, and on that basis Dexon denies those allegations.

6 12. Dexon does not have sufficient information to admit or deny the allegations of paragraph  
7 12 of the Complaint, and on that basis Dexon denies those allegations.

8 13. Dexon does not have sufficient information to admit or deny the allegations of paragraph  
9 13 of the Complaint, and on that basis Dexon denies those allegations.

10 14. Dexon does not have sufficient information to admit or deny the allegations of paragraph  
11 14 of the Complaint, and on that basis Dexon denies those allegations.

12 15. Dexon does not have sufficient information to admit or deny the allegations of paragraph  
13 15 of the Complaint, and on that basis Dexon denies those allegations.

14  
15  
16 **FACTUAL ALLEGATIONS RELATING TO DEFENDANT'S CONDUCT**

17 16. Dexon denies the allegations of paragraph 16 of the Complaint.

18 **Sale of Counterfeit CISCO Products on July 27, 2006**

19 17. Dexon denies the allegations of paragraph 17 of the Complaint.

20 18. Dexon denies the allegations of paragraph 18 of the Complaint.

21 **FBI's Seizure of Counterfeit CISCO Products from Dexon on February 26, 2008**

22 19. Dexon admits that on or about February 26, 2008 the Federal Bureau of Investigation  
23 ("FBI") executed a search warrant at Dexon's business location in Minneapolis, Minnesota and  
24 during the course of the investigation the FBI seized certain products. Dexon denies the  
25 remaining allegations of paragraph 19 of the Complaint.

26 20. Dexon denies the allegations of paragraph 20 of the Complaint.

**March 7, 2008 Cease and Desist Letter to O'NEILL and DEXON**

21. Dexon admits that on or about March 7, 2008 CISCO sent a letter to Steven O'Neill ("O'NEILL"), the then and current president and CEO of Dexon, a copy of which is attached to the Complaint as Attachment 1. The contents of that letter speak for themselves. Dexon denies the remaining allegations of paragraph 21 of the Complaint.

22. Dexon admits that on or about March 18, 2008, Dexon's counsel sent a letter to CISCO denying the allegations in CISCO's March 7, 2008 letter. Dexon further admits that a copy of the March 18, 2008 letter is attached to the Complaint as Attachment 2. The contents of that letter speak for themselves. Dexon denies the remaining allegations of paragraph 22 of the Complaint.

**Sale of Counterfeit CISCO Products to the City of Portland, Oregon In June 2008**

23. Dexon admits that at some time on or about June 2008, Dexon attempted to sell a certain number of CISCO branded products to the City of Portland, Oregon. Dexon denies the remaining allegations of paragraph 23 of the Complaint.

24. Dexon denies the allegations of paragraph 24 of the Complaint.

25. Dexon denies the allegations of paragraph 25 of the Complaint.

**Sale of Counterfeit CISCO Products to Wayne State University in June 2010**

26. Dexon admits the allegations of paragraph 26 of the Complaint.

27. Dexon denies the allegations of paragraph 27 of the Complaint.

**Sale of Counterfeit CISCO Products During July 2010**

28. Dexon admits that on or about July 14, 2010 it sold seven products and shipped them on or about July 21, 2010 to an address in Los Angeles, CA. Dexon denies the remaining allegations of paragraph 28 of the Complaint.

29. Dexon denies the allegations of paragraph 29 of the Complaint.

**August 6, 2010 Cease and Desist Letter to O'NEILL and DEXON**

1 30. Dexon admits that on or about August 6, 2010, CISCO sent a letter to O'NEILL, a copy of  
2 which is attached to the Complaint as Attachment 3 and speaks for itself. Dexon denies the  
3 remaining allegations of paragraph 30 of the Complaint.

4 31. Dexon admits that it responded to CISCO's August 6, 2010 letter with a letter dated  
5 August 23, 2010. Dexon further admits that a copy of the August 23, 2010 letter is attached to  
6 the Complaint as Attachment 4 and that the letter speaks for itself. Dexon denies the remaining  
7 allegations of paragraph 31 of the Complaint.

8 32. Dexon admits that CISCO responded to Dexon's August 23, 2010 letter with a letter dated  
9 August 30, 2010. Dexon further admits that a copy of the August 30, 2010 letter is attached as  
10 Attachment 5 and that the letter speaks for itself. Dexon denies the remaining allegations of  
11 paragraph 32 of the Complaint.

12 33. Dexon denies the allegations of paragraph 33 of the Complaint.

13  
14  
15 **FIRST CAUSE OF ACTION**  
16 **(Federal Trademark Infringement 15 U.S.C. § 1114)**

17 34. Dexon restates and incorporates by reference its responses to the allegations in paragraphs  
18 1-33 in response to the allegations in paragraph 34 of the Complaint.

19 35. Dexon denies the allegations of paragraph 35 of the Complaint.

20 36. Dexon denies the allegations of paragraph 36 of the Complaint.

21 37. Dexon denies the allegations of paragraph 37 of the Complaint.

22 38. Dexon denies the allegations of paragraph 38 of the Complaint.

23 39. Dexon denies the allegations of paragraph 39 of the Complaint.

24  
25 **SECOND CAUSE OF ACTION**  
26 **(Counterfeit of Registered Trademark 15 U.S.C. § 1114(1))**

27 40. Dexon restates and incorporates by reference its responses to the allegations in paragraphs  
28 1-39 in response to the allegations in paragraph 40 of the Complaint.

1 41. Dexon denies the allegations of paragraph 41 of the Complaint.

2 42. Dexon denies the allegations of paragraph 42 of the Complaint.

3 43. Dexon denies the allegations of paragraph 43 of the Complaint.

4 44. Dexon denies the allegations of paragraph 44 of the Complaint.

5 45. Dexon denies the allegations of paragraph 45 of the Complaint.

6 46. Dexon denies the allegations of paragraph 46 of the Complaint.

7  
8 **THIRD CAUSE OF ACTION**  
9 **(Unfair Competition 15 U.S.C. § 1125(a)(1)(A))**

10 47. Dexon restates and incorporates by reference its responses to the allegations in paragraphs  
11 1-46 in response to the allegations in paragraph 47 of the Complaint.

12 48. Dexon denies the allegations of paragraph 48 of the Complaint

13 49. Dexon denies the allegations of paragraph 49 of the Complaint.

14 50. Dexon denies the allegations of paragraph 50 of the Complaint.

15 51. Dexon denies the allegations of paragraph 51 of the Complaint.

16 52. Dexon denies the allegations of paragraph 52 of the Complaint.

17  
18 **FOURTH CAUSE OF ACTION**  
19 **(California Common Law Unfair Competition and Trademark Infringement)**

20 53. Dexon restates and incorporates by reference its responses to the allegations in paragraphs  
21 1-52 in response to the allegations in paragraph 53 of the Complaint.

22 54. Dexon denies the allegations of paragraph 54 of the Complaint.

23 55. Dexon denies the allegations of paragraph 55 of the Complaint.

24 56. Dexon denies the allegations of paragraph 56 of the Complaint.

25 57. Dexon denies the allegations of paragraph 57 of the Complaint.

26 58. Dexon denies the allegations of paragraph 58 of the Complaint.

27 59. Dexon denies the allegations of paragraph 59 of the Complaint.

**FIFTH CAUSE OF ACTION**  
**(Unfair Business Practices, Cal. Bus. & Prof. Code § 17200 et seq.)**

60. Dexon restates and incorporates by reference its responses to the allegations in paragraphs 1-59 in response to the allegations in paragraph 60 of the Complaint.

61. Dexon admits the allegations of paragraph 61 of the Complaint.

62. Dexon denies the allegations of paragraph 62 of the Complaint.

63. Dexon denies the allegations of paragraph 63 of the Complaint.

64. Dexon denies the allegations of paragraph 64 of the Complaint.

65. Dexon denies the allegations of paragraph 65 of the Complaint.

66. Dexon denies the allegations of paragraph 66 of the Complaint.

67. Dexon admits that Plaintiffs purport to seek “full restitution by Defendant according to proof to restore any and all property and monies, including interest, acquired by Defendants, and all costs caused to Plaintiffs as a result of Defendant’s unfair business practices.” Dexon denies that Plaintiffs are entitled to any such relief.

68. Dexon denies the allegations of paragraph 68 of the Complaint.

69. Dexon denies the allegations of paragraph 70 of the Complaint.

**SIXTH CAUSE OF ACTION**  
**(Fraud, Cal. Civ. Code § 1710)**

70. Dexon restates and incorporates by reference its responses to the allegations in paragraphs 1-69 in response to the allegations in paragraph 70 of the Complaint.

71. Dexon denies the allegations of paragraph 71 of the Complaint.

72. Dexon denies the allegations of paragraph 72 of the Complaint.

73. Dexon denies the allegations of paragraph 73 of the Complaint.

74. Dexon denies the allegations of paragraph 74 of the Complaint.

75. Dexon denies the allegations of paragraph 75 of the Complaint.

**AFFIRMATIVE DEFENSES**

On information and belief, Dexon asserts the following affirmative defenses:

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.
2. The Northern District of California is a forum non conveniens for this action. Venue is appropriate in the United States District Court for the District of Minnesota.
3. Plaintiffs' claims are barred in whole or in part under the doctrine of estoppel.
4. Plaintiffs' claims are barred in whole or in part under the doctrine of laches or waiver.
5. Plaintiffs' claims are barred in whole or in part under the doctrine of unclean hands.
6. Plaintiffs' claims are barred in whole or in part by applicable statutes of limitation.
7. Dexon's acts complained of herein are privileged and protected by the first-sale doctrine.
8. There is no likelihood of confusion, deception, or mistake on the part of the consuming public relating to or arising out of Dexon's acts complained of herein.
9. Plaintiffs have failed to exercise control over their alleged marks.
10. Dexon has not knowingly or voluntarily waived any applicable affirmative defense, and reserves the right to assert and rely upon such other applicable affirmative defenses as may become available or apparent during discovery and investigation.

**COUNTERCLAIMS**

Counterclaim Plaintiff Dexon Computer, Inc. asserts the following counterclaims against Counterclaim Defendant Cisco Systems, Inc., and alleges as follows:

**THE PARTIES**

11. Defendant and Counterclaim Plaintiff Dexon Computer, Inc. ("Dexon") is a Minnesota corporation with its principal place of business at 9201 E. Bloomington Freeway, Suite BB, Bloomington, Minnesota 55420.



12. On information and belief, Plaintiff and Counterclaim Defendant Cisco Systems, Inc. (“Cisco”) is a California corporation with its principal place of business at 170 W. Tasman Drive, San Jose, California 95134.

### **JURISDICTION**

13. This Court has subject matter jurisdiction over Dexon’s counterclaims pursuant to 28 U.S.C. §§ 1367 and 1332. Dexon’s counterclaims arise out of the same controversy as Cisco’s Federal claims, there is complete diversity of citizenship between Cisco and Dexon, and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

### **FACTS**

#### **Cisco Systems**

14. Cisco is a worldwide leader of networking for the Internet. Cisco offers products and related services in the core technologies of routing and switching, along with more advanced technologies in areas such as home networking, IP telephony, optical networking, security, storage area networking, and wireless technology. On information and belief, Cisco contracts for the manufacture of a majority of its products overseas to keep costs of manufacture at a minimum.

15. On information and belief, Cisco has a stranglehold on the supply of networking products in the United States, with a dominant market share that at times has reached 70% or more.

16. On information and belief, Cisco’s net sales for fiscal year 2010 alone were over \$40 billion, with profit margins exceeding industry norms.

#### **The Open Market**

17. As with any economic activity where there are significant profits, market forces have operated to create secondary markets for Cisco products. On information and belief, authentic or

1 genuine Cisco products come to the open market in the United States in a variety of ways  
2 including: (a) Cisco's knowing sale of such products to open market suppliers in the context of  
3 either specific end user deals or when Cisco needs to move inventory; (b) Cisco's authorized  
4 resellers' purchase of product in excess of what they need for a specific end user order and  
5 subsequent resale of such product into the open market; (c) Cisco end user's resale of new,  
6 unused product; and (d) through importation of such product from abroad where it has been sold  
7 by distributors, resellers, or end users under similar circumstances. On information and belief,  
8 Cisco resists attempts by end users and resellers to return product, resulting in a natural supply of  
9 open market Cisco product.  
10

11 18. Given the substantial profits available from sale of Cisco-branded product, market forces  
12 dictate that a secondary market will develop for such products. These market forces benefit end  
13 users in that they reduce prices for such products.  
14

15 19. Dexon is an independent open-market reseller of computer networking products, including  
16 routers, switches and other computer hardware. Dexon provides new, refurbished and  
17 discontinued hardware products, including authentic or genuine Cisco products, to its customers.  
18

19 20. Dexon obtains Cisco products from reliable suppliers, subjects such products to extensive  
20 quality control, and then resells such products to other resellers and to end users, at a profit but  
21 frequently at prices lower than that offered by Cisco "authorized resellers."  
22

23 21. On information and belief, Cisco regards open market resellers like Dexon as a threat to  
24 its excess profits. As a result, Cisco spends substantial money and effort to attack open market  
25 participants such as Dexon and to chill reseller and end user participation in the open market.

26 These steps include but are not limited to:

- 27 a. Prompting federal investigation of the open market on specious grounds that  
28 the open market presents a threat to the national security of the United States.

- 1           b. Employing a team of “Brand Protection” employees whose primary  
2           responsibility is to intervene with resellers and end users in cases where they  
3           are either contemplating the purchase of product, or have ordered product,  
4           from the open market. Brand Protection personnel use a variety of tools to  
5           disrupt open market sales, including: (i) advising resellers and end users that  
6           product from the open market is suspect, may damage or jeopardize their  
7           network operations, may void Cisco warranties, may be counterfeit, and is  
8           otherwise unreliable; and (ii) spreading false rumors about open market  
9           resellers and their owners.  
10  
11          c. Instructing its account managers, assigned to specific end users: (i) to convince  
12          end users to specify in RFPs the acquisition of Cisco equipment through  
13          “authorized” resellers only (even if the result is materially higher pricing); (ii)  
14          to advise resellers and end users of the same issues raised by Brand Protection  
15          and, if necessary, invite Brand Protection into the discussion.  
16  
17          d. Tortiously and erroneously insinuating to resellers and end users that open  
18          market participants in general are engaging in illegal activity when this is not  
19          the case.  
20

21           **Cisco’s Tortious Efforts to Interfere with Dexon’s Business: Lost Customers**

22          22. In May 2006, Jacobs Engineering (“Jacobs”) submitted an order for \$284,000.00 worth of  
23          new and used Cisco product from Dexon. On information and belief, a Cisco technical employee  
24          approved select equipment as new and therefore eligible for support and licensing, but a Cisco  
25          sales representative subsequently denied eligibility for support and licensing. As a result, Jacobs  
26          cancelled its \$284,000.00 contract and Dexon lost all future business with Jacobs.  
27  
28

1 23. In May 2007, American Eagle Outfitters (“AEO”), with whom Dexon had previously  
2 done a substantial amount of business, received an email from its Cisco account representative  
3 claiming that equipment AEO had recently purchased from Dexon was “Gray Market  
4 equipment.” The email went on to state: “Dexon is not authorized to resell or distribute Cisco  
5 equipment. In fact, even the switches they sourced for you was [sic] done through a third party  
6 with a different end user listed. This is highly unusual, possibly illegal, behavior . . . My advice is  
7 for you to cancel the remainder of the order with Dexon and place through an authorized reseller  
8 like Presidio, Sprint, or IBM.” As a result, AEO discontinued its customer relationship with  
9 Dexon entirely.

11 24. In September 2008, Dexon was awarded a contract to supply Cisco switches to Omaha  
12 Public Power District (“Omaha Power”), and shortly thereafter received a purchase order  
13 totalling approximately \$75,000.00. On information and belief, Cisco learned of Dexon  
14 receiving the Omaha Power award and cautioned Omaha Power not to purchase from Dexon. As  
15 a result, Omaha Power cancelled its purchase order and has not since submitted any orders to  
16 Dexon.

18 25. In early 2010, Dexon customer The Valspar Corporation (“Valspar”) was contacted by its  
19 Cisco representative, who had discovered that Valspar was purchasing a substantial amount of  
20 equipment from Dexon. On information and belief, the Cisco representative told Valspar that a  
21 lot of the equipment Dexon sold Valspar came from Europe and that it was illegal for Valspar to  
22 be using the equipment. Valspar informed Dexon that it would be contacting its attorneys  
23 regarding the information it had received from its Cisco representative, and that it would get back  
24 to Dexon. Dexon never heard back from Valspar and has since not received any orders from  
25 Valspar.  
26  
27  
28

1 26. In March 2010, Wayne State University (“Wayne State”) entered into a contract with  
2 Dexon for the purchase of \$600,000.00 worth of brand new product. On information and belief,  
3 Cisco learned of Dexon’s Wayne State deal and informed Wayne State that licenses would not be  
4 valid for these products because the products were not new. As a result, Dexon lost the Wayne  
5 State contract and all other business from Wayne State.

6  
7 27. The customers discussed above are merely a sampling of the customers that Dexon has  
8 lost as a result of known tortious conduct by Cisco. The actual and total number of customers lost  
9 as a result of Cisco’s tortious conduct, including Cisco conduct/actions Dexon is presently  
10 unaware of, is unknown.

11 **Cisco’s Tortious Efforts to Interfere with Dexon’s Business: Product Returns and Other**  
12 **Lost Business Opportunities**

13 28. In April 2007, Dexon customer Washburn University (“Washburn U”) received an email  
14 from its Cisco Account manager regarding “the implications of buying Cisco equipment through  
15 a non Cisco Certified Partner.” The Cisco email stated that Dexon was “NOT a Cisco Certified  
16 Partner” and, accordingly, Washburn U was “at high risk of getting either aged product, used  
17 product, or counterfeit product by purchasing this equipment through Dexon.” The magnitude of  
18 Washburn’s orders with Dexon have subsequently decreased.

19  
20 29. In November 2008, Dexon customer Development Dimensions International (“DDI”)  
21 contacted Dexon to return certain Cisco products it had purchased from Dexon that summer  
22 because a Cisco representative had informed DDI that the products were “illegally obtained.”

23 30. In early 2009, Pedernales Electric Cooperative, Inc. (“Pedernales”) submitted two  
24 purchase orders to Dexon for the purchase of certain networking equipment. Dexon responded to  
25 the purchase order by supplying new, genuine, authentic Cisco equipment to Pedernales. On  
26 information and belief, one or more Cisco representatives learned of the Pedernales purchase  
27 orders with Dexon. The Cisco representative(s) informed Pedernales that, among other things,  
28

1 the equipment provided by Dexon was “not new” equipment and that it was not qualified for  
2 maintenance under Cisco’s licensing agreements. As a result, Pendernales cancelled its two  
3 purchase orders with Dexon and asked to return the equipment provided under those purchase  
4 orders.

5  
6 31. In early 2011, Dexon supplied four new, genuine, authentic Cisco 3750X switches to  
7 K&N Engineering, Inc. (“K&N”). On information and belief, K&N’s Cisco account manager  
8 learned of K&N’s purchase from Dexon. The Cisco account manager led K&N to believe that  
9 the switches provided by Dexon were “used” rather than new. As a result, K&N asked to return  
10 the products.

11  
12 32. In early 2011, Dexon submitted a bid for the supply of certain networking equipment to  
13 Burns & McDonnell (“Burns”). On information and belief, Burns’ Cisco representative learned of  
14 Dexon’s bid to Burns. The Cisco representative informed Burns that since Dexon was not an  
15 authorized reseller, it “almost certainly” could not be selling new, legitimate Cisco gear. As a  
16 result, Burns informed Dexon that it would be proceeding with another vendor for the supply of  
17 the needed equipment.

18  
19 33. In May 2011, Miami University (“Miami U”), a customer of Dexon for over nine years,  
20 placed an order for Cisco switches from Dexon. On information and belief, Cisco representatives  
21 learned of Miami U’s order and asked Miami U to provide the source of its order because Cisco  
22 feared the switches were stolen and/or illegitimate.

23  
24 34. On information and belief, Cisco representatives and account managers have informed  
25 other Dexon customers that “almost all Cisco reseller product is uncertified” and therefore  
26 “illegal.” As a result, Dexon’s customers have questioned the authenticity and legality of  
27 products sold by Dexon.  
28

1 35. For example, in November 2007, Dexon submitted a bid to Castle Family Health Centers  
2 (“Castle”) for the supply of certain Cisco equipment. Cisco learned of Dexon’s bid and sent a  
3 letter to Castle on November 20, 2007. Cisco’s letter cited a “flood of non-genuine (counterfeit)  
4 SFPs, WICs, GBICs among other items, onto the Secondary Market” and the resulting “buyer  
5 beware” scenario, and further that Dexon was not a Cisco Authorized Reseller. Cisco’s letter  
6 falsely insinuated that Dexon was selling counterfeit goods to Castle.  
7

8 36. As another example, in November 2010, Dexon customer Fourth Floor Consulting  
9 (“Fourth Floor”) informed Dexon that its Cisco sales representative had informed Fourth Floor  
10 that “Dexon sells counterfeit equipment.”  
11

12 37. Cisco’s “Brand Protection” team has also presented, published, and/or caused to be  
13 published the false and misleading message that “genuine Cisco gear only comes from Cisco and  
14 its partners.”  
15

### **Pattern and Practice**

16 38. For the past several years, Cisco has engaged in the type of conduct described above with  
17 the intent to disrupt contracts between Dexon and its customers, pending opportunities with such  
18 customers, future business with such customers, and even with the apparent goal of driving  
19 Dexon out of business altogether.  
20

21 39. As a direct result of Cisco’s tortious interference, Dexon has suffered cancellation of  
22 numerous pending orders, loss of opportunity to bid on projects, and the loss of entire  
23 relationships with many of its top customers.  
24

### **COUNT I** **Intentional Interference with Contractual Relations** **Against Cisco Systems, Inc.**

25  
26 40. Dexon repeats and realleges each of the allegations set forth in the preceding paragraphs  
27 as if fully set forth herein.  
28

1 41. Dexon secured contracts with certain customers for the sale of Cisco products on which  
2 Dexon would have earned significant profits.

3 42. On information and belief, Cisco knew or should have known of these contractual  
4 relationships between Dexon and these third party customers.

5 43. On information and belief, Cisco intentionally, or with reckless disregard for the truth,  
6 made false and misleading statements about Dexon and the products it sells to these customers in  
7 order to disrupt the contractual relationship and to cause these customers to purchase product  
8 from Cisco authorized resellers at a higher price.

9 44. Cisco's statements in fact disrupted these contractual relationships between Dexon and its  
10 customers.

11 45. Dexon has suffered substantial economic damage as a result of this wrongful conduct in  
12 an amount subject to proof at trial.

13 46. Cisco's conduct, as outlined above, demonstrates that Cisco acted fraudulently,  
14 oppressively, and with malice within the meaning of Cal. Civ. Code § 3294, entitling Dexon to  
15 punitive or exemplary damages in an amount sufficient to punish Cisco and to make an example  
16 of it to the community such that Cisco will not engage in such conduct in the future.

17  
18  
19 **COUNT II**  
20 **Intentional Interference with Prospective Economic Advantage**  
21 **Against Cisco Systems, Inc.**

22 47. Dexon repeats and realleges each of the allegations set forth in the preceding paragraphs  
23 as if fully set forth herein.

24 48. An economic relationship existed between Dexon and its actual and prospective  
25 customers, each of which contained the probability of substantial future economic benefits to  
26 Dexon.

27 49. On information and belief, Cisco knew or should have known of these relationships.  
28



1 50. On information and belief, Cisco intentionally, or with reckless disregard, engaged in  
2 tortious conduct designed to disrupt Dexon's potential benefit from these relationships, including:

3 a. By intentionally misrepresenting, or representing with reckless disregard for the  
4 truth, to Dexon's customers, among other things, that the Cisco products Dexon sold were  
5 not new, used, counterfeit, suspect, non-genuine, and/or unauthorized; and

6  
7 b. By intentionally misrepresenting, or representing with reckless disregard for the  
8 truth, to Dexon's customers, among other things, that if they purchased product from open  
9 market resellers such as Dexon, they would jeopardize the security of their data networks.

10 51. Cisco's statements were made with the intent to disrupt the economic relationship  
11 between Dexon and its potential and actual customers in order to put Dexon out of business and  
12 to ensure that these customers would purchase Cisco product at higher prices from "Cisco  
13 Authorized Resellers" under Cisco's control.

14  
15 52. As a result of the efforts detailed above, Dexon's relationships with its potential and actual  
16 customers have in fact been permanently disrupted and/or materially damaged in a significant  
17 number of instances, including its future relationship with Jacobs and AEO, for example. As a  
18 result of CISCO's tortious efforts, Dexon's customers have refused to pay for certain Cisco  
19 goods, have returned and/or cancelled orders for such goods, have removed Dexon's bids from  
20 contention for business, and have ceased doing business with Dexon on other products and/or  
21 altogether.

22  
23 53. Dexon has suffered substantial economic damage as a result of this wrongful conduct in  
24 an amount subject to proof at trial.

25 54. Cisco's conduct, as outlined above, demonstrates that Cisco acted fraudulently,  
26 oppressively, and with malice within the meaning of Cal. Civ. Code § 3294, entitling Dexon to  
27  
28

1 punitive or exemplary damages in an amount sufficient to punish Cisco and to make an example  
2 of it to the community such that Cisco will not engage in such conduct in the future.

3  
4 **COUNT III**  
5 **Trade Libel**  
6 **Against Cisco Systems, Inc.**

7 55. Dexon repeats and realleges each of the allegations set forth in the preceding paragraphs  
8 as if fully set forth herein.

9 56. On information and belief, Dexon alleges that Cisco has repeatedly made disparaging  
10 statements about Dexon's products as detailed herein.

11 57. Cisco's statements disparaged Dexon's products. On information and belief, Dexon  
12 alleges that the claims made were false or materially misleading.

13 58. Dexon has suffered and will continue to suffer irreparable harm should Cisco's trade libel  
14 be allowed to continue.

15 59. As a proximate result of Cisco's statements, prospective and actual customers have been  
16 deterred from buying Dexon's products and from otherwise dealing with Dexon. Dexon has  
17 suffered substantial economic damage as a result of this wrongful conduct in an amount subject to  
18 proof at trial.

19 60. Cisco's conduct, as outlined above, demonstrates that Cisco acted fraudulently,  
20 oppressively, and with malice within the meaning of Cal. Civ. Code § 3294, entitling Dexon to  
21 punitive or exemplary damages in an amount sufficient to punish Cisco and to make an example  
22 of it to the community such that Cisco will not engage in such conduct in the future.

23 61. Dexon will suffer irreparable harm to its goodwill if this trade libel continues. Dexon is  
24 entitled to injunctive relief to preclude Cisco's trade libel.

25  
26 **COUNT IV**  
27 **Unfair Competition Under Cal. Bus. & Prof. Code § 17200 et seq.**  
28

62. Dexon repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

63. Cisco's conduct, as set forth above, is unlawful, unfair, and fraudulent as well as untrue and deceptive within the meaning of Cal. Bus. & Prof. Code § 17200 *et seq.*

64. Dexon will continue to suffer irreparable harm to its goodwill if this unfair competition continues. Dexon is entitled to injunctive relief to preclude Cisco's unfair competition.

**PRAYER FOR RELIEF**

65. Wherefore, Defendant and Counterclaim Plaintiff Dexon Computer, Inc. denies that Plaintiffs and Counterclaim Defendants Cisco Systems, Inc. and Cisco Technology, Inc. are entitled to any of the relief requested in paragraphs 1-13 of their Prayer for Relief and prays for judgment in its favor and against Plaintiffs and Counterclaim Defendants Cisco Systems, Inc. and Cisco Technology, Inc. as follows:

- a. Dismissing Plaintiffs' claims with prejudice, together with costs and disbursements;
- b. Awarding Dexon its attorneys fees incurred in defending against such claims;
- c. An award of actual damages from Cisco Systems, Inc., subject to proof at trial but in an amount in excess of \$75,000.;
- d. An award of punitive damages in an amount sufficient to punish Cisco Systems, Inc., to make an example of it to the community, and to deter it from such conduct as to Dexon or others in the future;
- e. For equitable remedial efforts by Cisco Systems, Inc. sufficient to rehabilitate Dexon's damaged reputation;
- f. For orders restraining Cisco Systems, Inc. from engaging in similar conduct in the future;

1 g. For Dexon's costs and fees incurred herein, including but not limited to attorneys'  
2 fees and costs; and

3 h. Such further relief as this Court deems just and proper under the circumstances of  
4 this action.

5  
6 **DEMAND FOR JURY TRIAL**

7 Dexon demands a trial by jury on all issues so triable.

8  
9  
10 Dated: June 9, 2011

BRIGGS AND MORGAN, P.A.

11  
12 By: s/Erin O. Dungan  
13 Erin O. Dungan

14 Attorneys for Defendant  
15 Dexon Computer, Inc.

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